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| APPLICATION NO.            | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|----------------------------|-------------|----------------------|-----------------------|------------------|
| 09/954,621                 | 09/17/2001  | Jerry G. Hodsdon     | 2961-US-B1            | 6827             |
| 63543                      | 7590        | 07/15/2008           | EXAMINER              |                  |
| AVERY DENNISON CORPORATION |             |                      | NORDMEYER, PATRICIA L |                  |
| Patent Group               |             |                      | ART UNIT              | PAPER NUMBER     |
| Law Department - 3 South   |             |                      |                       | 1794             |
| P.O. BOX 7090              |             |                      |                       |                  |
| PASADENA, CA 91109-7090    |             |                      |                       |                  |
| MAIL DATE                  |             | DELIVERY MODE        |                       |                  |
| 07/15/2008                 |             | PAPER                |                       |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/954,621             | HODSDON ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Patricia L. Nordmeyer  | 1794                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 July 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 198-203,207-216,220-223,231,232,246-249 and 251-254 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 198-203,207-216,220-223,231,232,246-249 and 251-254 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/1/08</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 1, 2008 has been entered.

### ***Withdrawal of Allowed claims***

2. The indicated allowability of claims 198-203, 207-216, 220-223, 231, 232, 246-249 and 251-254 in the office action dated April 2, 2008 is withdrawn due to the IDS submitted by the Applicant on July 1, 2008.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 198-203, 207-216, 220-223, 231, 232, 246-249 and 251-254 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “a weakened line segment in the facestock sheet, to but not through the liner sheet, outside of the label, in a label-free waste portion of the facestock sheet, and extending

linearly between the label and an adjacent edge of the facestock sheet; the weakened line segment defining a straight line extending between the adjacent edge and another edge of the facestock sheet and passing through the label” in claims 198 and 212 is unclear, which render the claims vague and indefinite. It is unclear from the claim language where the weakened line segment is located with regard to the label as one line in the phrase states that it is a label-free waste portion of the facestock while a second line states that it passes through the label.

Claims 199-203, 207-213, 214-216, 220-223, 231, 232, 246-249 and 251-254 are also rejected under 35 U.S.C. 112 2<sup>nd</sup> paragraph due to their dependency on the above rejected claims.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 198 – 202, 207 – 215, 220 – 223, 247, 249, 252 and 254 rejected under 35 U.S.C. 102(b) as being anticipated by Kendrick (USPN 2,883,044).

Kendrick discloses a label sheet construction (Figure 1), comprising: a liner sheet (Figure 2, #1); a facestock sheet adhered to the liner sheet (Figures 1 and 3, #4); at least one cut line through the facestock sheet but not the liner sheet to form a facestock sheet label releasably

adhered to the liner sheet (Figure 1, #2); a weakened line segment in the facestock sheet, to but not through the liner sheet, outside of the label, in a label-free waste portion of the facestock sheet (Figure 1, #7), and extending linearly between the label and an adjacent edge of the facestock sheet (Figure 1, #7); the weakened line segment defining a straight line extending between the adjacent edge and another edge of the facestock sheet and passing through the label (Figure 1, #7); the straight line in the label being free of weakened line segments (Column 3, lines 5 – 8); the straight line defining a fold line of the label sheet construction (Figure 4); and the label sheet construction being configurable to a label-portion graspable condition wherein a portion of the label is separated from the liner sheet generally at the fold line with the liner sheet bent back generally on the fold line (Figure 5); and the label sheet construction being configurable in a first configuration wherein the entire label is adhered to the liner sheet (Figure 1) and in an alternative second configuration wherein a first portion of the liner sheet is in a bent back position along the straight line relative to a second portion of the liner sheet and a portion of the label is in a released condition relative to the first portion of the liner sheet and spaced from the liner sheet in a label-portion graspable position (Figure 5) as in claims 198 and 212.

Regarding claims 200 and 214, the weakened line segment engages at an end thereof the at least one cut line and the weakened line segment and the at least one cut line together form a continuous die cut line in the facestock sheet (Figure 1, #7; Column 3, lines 1 – 5). As in claims 201, 208, 215, 249 and 254, the weakened line segment is an elongated continuous die cut line (Column 3, lines 7 – 19). Regarding claim 202, the label sheet comprises another weakened line segment on another side of the label and lying on the straight line (Figure 3, #4a). With regard to claims 207 and 220, an adhesive coats an entire bottom surface of the label (Column 2, lines 53 –

58). As in claims 210 and 222, the straight line is perpendicular to the edge of the facestock sheet (Figure 1, #7). Regarding claims 209 and 221, the label-free waste portion of the facestock sheet surrounds the label (Figure 1, #4). With regard to claim 211 and 223, the facestock sheet includes a non-label edge frame, and the weakened line segment is in the non-label edge frame (Figure 1, #4 and 7). As in claims 199, 213, 247 and 252, the end of the weakened line segment closest to the label is spaced a short distance therefrom by a short uncut section of the facestock sheet (Column 3, line 12 – 19).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 198, 203, 216, 231, 232, 246, 248, 251 and 253 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendrick (USPN 2,883,044) in view of Wise (USPN 3,361,252).

Kendrick discloses a label sheet construction (Figure 1), comprising: a liner sheet (Figure 2, #1); a facestock sheet adhered to the liner sheet (Figures 1 and 3, #4); at least one cut line through the facestock sheet but not the liner sheet to form a facestock sheet label releasably adhered to the liner sheet (Figure 1, #2); a weakened line segment in the facestock sheet, to but not through the liner sheet, outside of the label, in a label-free waste portion of the facestock

sheet (Figure 1, #7), and extending linearly between the label and an adjacent edge of the facestock sheet (Figure 1, #7); the weakened line segment defining a straight line extending between the adjacent edge and another edge of the facestock sheet and passing through the label (Figure 1, #7); the straight line in the label being free of weakened line segments (Column 3, lines 5 – 8); the straight line defining a fold line of the label sheet construction (Figure 4); and the label sheet construction being configurable to a label-portion graspable condition wherein a portion of the label is separated from the liner sheet generally at the fold line with the liner sheet bent back generally on the fold line (Figure 5); and the label sheet construction being configurable in a first configuration wherein the entire label is adhered to the liner sheet (Figure 1) and in an alternative second configuration wherein a first portion of the liner sheet is in a bent back position along the straight line relative to a second portion of the liner sheet and a portion of the label is in a released condition relative to the first portion of the liner sheet and spaced from the liner sheet in a label-portion graspable position (Figure 5). However, Kendrick fails to disclose the label has a burst configuration with alternating long and short points, the label sheet construction has 8 ½ x 11 inch, 8 ½ x 14 inch or A4 dimensions and is constructed to be sheet-fed through a primer or copier to print indicia on the label to form a printed label on the liner sheet, the label having a rectangular shape and the weakened line segment being a perforated line.

Wise teaches a label sheet construction wherein the label has a rectangular shape (Figure 1, #2) and the weakened line segment being a perforated line (Column 2, lines 51 – 63) wherein

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the label sheet has a size that fits easily into a pocket (Column 6, lines 16 - 19) for the purpose of exposing a portion of a label to be grasped to be removed for use (Column 1, lines 52 - 60).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided rectangular labels with a perforated weakened line segment in Kendrick in order to expose a portion of a label to be grasped to be removed for use as taught by Wise.

With regard to the label having a burst configuration with alternating long and short points, It is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape which would have been unforeseen to one of ordinary skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the label. One skilled in the art would have been motivated to do so in order to change the appearance to appeal to the consumer.

With regard to the label sheet construction has 8 ½ x 11 inch, 8 ½ x 14 inch or A4 dimensions and is constructed to be sheet-fed through a primer or copier to print indicia on the label to form a printed label on the liner sheet, Wise teaches that the label sheet has a size that fits easily into a pocket (Column 6, lines 16 - 19). The size dimension of the label sheet would have been obvious matter of design choice as to modify the size in Wise to provide for maximum area for information display. With regard to the sheet being constructed to be sheet-fed through a

primer or copier to print indicia on the label to form a printed label on the liner sheet, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Response to Arguments***

9. Applicant's arguments with respect to claims 198-203, 207-213, 214-216, 220-223, 231, 232, 246-249 and 251-254 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571)272-1496. The examiner can normally be reached on Mon.-Thurs. from 10:00-7:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L. Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia L. Nordmeyer  
Primary Examiner  
Art Unit 1794

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Primary Examiner, Art Unit 1794